



# COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE

February 4, 2014

Hon. Stefan I. Mychajliw  
Erie County Comptroller  
95 Franklin Street, 11<sup>th</sup> Floor  
Buffalo, New York 14202

**Re: Comptroller Audit of Hotel Occupancy Tax**

Dear Comptroller Mychajliw:

On December 13, 2013, your office issued an audit regarding the County's collection and enforcement of the Hotel Occupancy Tax for the period March 1, 2012-May 31, 2013 ("Audit"). Under the County Comptroller's audit procedures, the Division of Budget and Management are provided with audit reports for our review and, if applicable, comment. When my office reviewed the Audit, we noticed several matters for which we are requesting clarification from you and for which we have concerns.

## **Audit Finding on Establishment that Over-Collected and Retained Tax**

In Audit finding number 3, you reported that one establishment over-collected Hotel Occupancy Tax from guests for the past four years and improperly collected \$13,358 in revenue which it retained. In your press release, you noted this finding and wrote: "Businesses know we are going to make sure customers are protected and not overcharged. I am proud of our auditors for identifying this problem and making sure it was fixed." However, your Audit did not discuss the next steps. If the establishment over-charged guests for four years, what steps is the hotel/motel (or your office) taking to find the guests and refund their money? What do you recommend happen to this tax revenue (i.e. should the County receive it)? I am sure you will agree that it is not proper for the establishment to retain the money.

## **Audit Finding on Repeated Scofflaw**

In Audit finding number 4, you reported that six hotel/motel establishments "sometimes regularly" failed to remit all of the Hotel Occupancy Tax revenue due and owing to the County due to cash flow problems. You added that one establishment was severely in arrears, having failed to remit approximately \$42,000 in tax.

As you know, an establishment that collects the tax is merely collecting a tax from guests that are due to the County. You declined to identify the establishment in the Audit, citing the 1974 local law creating the tax. However, as your report noted, the law was amended in 2007 to allow the County Comptroller to identify a repeat scofflaw. Under the circumstances, given the apparent repeated unwillingness of an establishment to remit collected taxes, it seems appropriate that the Comptroller's Office identify the scofflaw and investigate legal remedies. When this situation happened following a prior audit of the tax by then-Comptroller Mark Poloncarz in 2007, he requested the amendment of the law, and used the new-found power to publicly name scofflaws and successfully compelled them to remit the tax.

### **Generally Accepted Government Auditing Standards**

We do not believe you conducted this audit in accordance with Generally Accepted Government Auditing Standards ("GAGAS").

First, I have become aware that former Associate Deputy Comptroller Douglas Riffel, a non-auditor who did not work for the Division of Audit and Control, conducted the field work and tests and wrote the document.<sup>1</sup> Is this accurate? If true that Mr. Riffel conducted this audit, this is a violation of Section 1.07(a) and (b) of GAGAS. Under GAGAS, non-auditors cannot conduct audits and non-audit services cannot be represented as complying with GAGAS, as you have done. That representation is a violation of GAGAS Section 2.12.

Second, nowhere in the Audit do you disclose that your office is responsible for the collection and enforcement of the Hotel Occupancy Tax. You do reveal this in your press release (at the end). Under Sections 1.10-1.13 of GAGAS, auditors and audit organizations are required to adhere to ethical principles and standards. In addition, Sections 3.02-3.26 of GAGAS govern the independence of the auditor and establish protocols, including particularly when the auditor is auditing itself. Because your Audit never revealed that you were auditing your own office, you have violated GAGAS regarding audit and auditor independence.

### **Comptroller's Audit Procedures**

Lastly, the Audit stated that "an exit conference was held on December 9, 2013 with the staff of the Hotel Occupancy Tax Division" and "They concurred with the

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<sup>1</sup> In the event you claim that Mr. Riffel was serving as acting Deputy Comptroller-Audit after Teresa Fraas separated from the County on September 4, 2013, I would note that no such status was ever announced publicly or otherwise. In fact, during this period, the Comptroller's Office told the Division of Budget and Management at an exit conference for a different audit that Deputy Comptroller-Accounting Gregory Gach was overseeing and supervising the Division of Audit and Control and he attended an audit exit conference in that role. If Mr. Gach was overseeing the Division of Audit and Control between early September and mid-November (when the new Deputy Comptroller-Audit was hired – and whose name does not appear on this Audit report), when Mr. Gach was also in charge of the Hotel Occupancy Tax process, there is an even larger independence issue and violation of GAGAS.

findings and recommendations within this report, and have taken all appropriate corrective actions.” However, you failed to identify who “they” are. Under your office’s established audit procedures, an audited entity is directed to provide a written response to any audit to the Comptroller’s Office, the Erie County Legislature, the County Executive, and the Division of Budget and Management. That requirement is codified and written in every audit report by the Comptroller.

However, in this case, no such language was provided by your office in the audit report. The Audit states that staff of the Hotel Occupancy Tax Division concurred with your findings and vaguely represents that they have already “taken all appropriate corrective actions.” In this regard, you have violated your office’s longstanding audit protocols and procedures for auditee responses requiring a written response. Readers are essentially forced to “trust” that your office is taking “appropriate corrective actions” without knowing what they are, and what steps you have taken. If your office is going to require non-Comptroller departments that are audited to provide written responses to audits, you must hold yourself to the same standard.

## **Conclusion**

Properly-planned and executed Audits are an important part of the process of checks and balances in government and are valuable in providing recommendations for process improvement, as well as addressing other deficiencies or gaps. Unfortunately, it appears that once again, your office has violated GAGAS and conducted an Audit that falls far short of the professional requirements required of your office by the United States Government Accountability Office and Section 1802(e) of the County Charter.

I look forward to hearing from you concerning this Audit and my questions seeking clarification.

Sincerely yours,



Robert W. Keating  
Director of Budget and Management

RWK